UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

HD

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,352	11/21/2003	John R. Wall	3257-031853	3304

28289 7590 06/25/2007

THE WEBB LAW FIRM, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

EXAMINER	
MILLS, DANIEL J	

ART UNIT	PAPER NUMBER
3679	

MAIL DATE	DELIVERY MODE
06/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/719,352	WALL, JOHN R.	
	Examiner	Art Unit	
	Daniel J. Mills	3679	DJM

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 July 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/16/2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safe-Fence as shown on the April 8, 2001 archive of www.safefence.com accessible using the internet archive website "wayback machine" at:

http://web.archive.org/web/20010311153850/www.safefence.com (please note also, the marked up attachment included on pages 9-11 of this Office action) in view of Johnson (US 5,661,878) and Robbins Jr. (US Re. 32,707).

Regarding claim 1, Safe-Fence discloses a fence comprising a rail consisting of at least two metal wires ensheathed in a plastic web (the webbing used for the fence is

disclosed as having stainless steel wires interwoven), a slotted connector (1) having a face plate (encompasses the entirety of 1) with two slots (A and B) and a middle portion (3) separating the two slots, the connector having a front side (facing away from reader) and a rear side (facing toward reader) and also having a post attachment end (2), a free end of the rail (4) being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot (A) nearest the post attachment end, round the middle portion (3), and then back through the second slot (B), and a post (5) to which the slotted connector is attached using a fastener (5).

Safe-fence fails to disclose that the slotted connector has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots.

Johnson teaches a planar strap buckle which has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots for the purpose of providing a buckle which can be manufactured more simply, more economically, and with good reliability (column 1 lines 18-20) and to provide a buckle which is of unitary structure, simple, reliable in operation, easy to operate and inexpensive to manufacture (column 1 lines 26-28). Accordingly, It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Safe-fence to include a planar connector for the purpose of providing a buckle which can be manufactured more simply, more economically, and with good reliability and to provide a buckle which is of

unitary structure, simple, reliable in operation, easy to operate and inexpensive to manufacture as taught by Johnson.

It is the position of the office that Safe-Fence discloses a rail which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system (the rail is composed of plastic and metal which are 'rigid' materials, and the rail is obviously capable of being manually deformed). However, assuming arguendo that Safe-Fence fails to disclose a rail meeting this description, Robbins Jr. and applicant's admitted prior art teaches the use of a rail composed of plastic-ensheathed metal wires which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system for the purpose of providing excellent durability for relatively low cost (see: abstract; column 1 lines 49-56; applicant's admitted prior art, paragraphs 2 and 3 of applicant's original specification). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Safe-Fence to include a rail composed of plastic-ensheathed metal wires which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system for the purpose of providing excellent durability for relatively low cost as taught by Robbins Jr and applicant's admitted prior art.

Regarding claim 3, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the end connector is attached to the post using a fastener (see figure 1) which permits the connector to pivot about the fastener.

Regarding claim 4, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the faceplate further comprises a through hole (see 2) adapted to receive the fastener.

Regarding claim 5, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the fastener is a lag bolt.

Regarding claim 6, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the faceplate (encompasses the entirety of 1 includes a bend between the first slot and the post attachment end (2) (this is shown in figure 1 in the photo of the R-50 corner tensioner).

Regarding claim 7, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the connector is made of steel.

Regarding claim 9, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the post is a wooden post with a circular cross section (see the archive website at http://web.archive.org/web/20010311150951/www.safefence.com/Install_End_Posts.htm).

Regarding claim 10, Safe-Fence in view of Johnson and Robbins Jr. results in a fence further including a slotted joining connector (7) having a face plate with a first slot (8), a second slot (9), and a third slot (10), the joining connector having a front side (into the paper) and a rear side (out of the paper).

Regarding claim 11, Safe-Fence in view of Johnson and Robbins Jr. results in a fence further comprising a second rail (shown in figure 3) consisting of at least two

metal wires ensheathed in a plastic web, with ends of the first (11) and second (12) rails being in abutting relationship to each other (see figure 3).

Regarding claim 12, Safe-Fence in view of Johnson and Robbins Jr. results in a fence wherein the first slot (8) and the second slot (9) are adapted to receive the abutting end of the first rail (11) and the second slot (9) and the third slot (10) are adapted to receive the abutting end of the second rail (12).

Claims 1, 2, 5-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safe-Fence as shown on the April 8, 2001 archive of www.safefence.com accessible using the internet archive website "wayback machine" at:

http://web.archive.org/web/20010311153850/www.safefence.com (please note also, the marked up attachment included on pages 9-11 of this Office action) in view of Brattstrom (US 3,858,279) and Robbins Jr. (US Re. 32,707).

Regarding claim 1, Safe-Fence discloses a fence comprising a rail consisting of at least two metal wires ensheathed in a plastic web (the webbing used for the fence is disclosed as having stainless steel wires interwoven), a slotted connector (1) having a face plate (encompasses the entirety of 1) with two slots (A and B) and a middle portion (3) separating the two slots, the connector having a front side (facing away from reader) and a rear side (facing toward reader) and also having a post attachment end (2), a free end of the rail (4) being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot (A) nearest the post attachment end,

round the middle portion (3), and then back through the second slot (B), and a post (5) to which the slotted connector is attached using a fastener (5).

Safe-fence fails to disclose that the slotted connector has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots.

Brattstrom teaches a planar strap buckle (shown in Figure 1) which has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots and return edges (2) for the purpose of providing a buckle which with which adequate tightening can be achieved simply and quickly (column 1 lines 9-10). Accordingly, It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Safe-fence to include a planar connector for the purpose of providing a buckle which with which adequate tightening can be achieved simply and quickly as taught by Brattstrom.

It is the position of the office that Safe-Fence discloses a rail which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system (the rail is composed of plastic and metal which are 'rigid' materials, and the rail is obviously capable of being manually deformed). However, assuming arguendo that Safe-Fence fails to disclose a rail meeting this description, Robbins Jr. and applicant's admitted prior art teaches the use of a rail composed of plastic-ensheathed metal wires which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system for the purpose of providing excellent durability for relatively low cost

(see: abstract; column 1 lines 49-56; applicant's admitted prior art, paragraphs 2 and 3 of applicant's original specification). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Safe-Fence to include a rail composed of plastic-ensheathed metal wires which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system for the purpose of providing excellent durability for relatively low cost as taught by Robbins Jr and applicant's admitted prior art.

Regarding claim 2, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence wherein the end connector comprises return edges extending along opposing sides of the rigid member, the return edges extending perpendicularly from the faceplate (the hooks 6 shown on either side of component 2 on the R-50 corner tensioner, curve perpendicularly away from the plane of the faceplate).

Regarding claim 5, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence wherein the fastener is a lag bolt.

Regarding claim 6, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence wherein the faceplate (encompasses the entirety of 1 includes a bend between the first slot and the post attachment end (2) (this is shown in figure 1 in the photo of the R-50 corner tensioner).

Regarding claim 7, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence wherein the connector is made of steel.

Regarding claim 9, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence wherein the post is a wooden post with a circular cross section (see the archive

website at

http://web.archive.org/web/20010311150951/www.safefence.com/Install_End_Posts.htm).

Regarding claim 10, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence further including a slotted joining connector (7) having a face plate with a first slot (8), a second slot (9), and a third slot (10), the joining connector having a front side (into the paper) and a rear side (out of the paper).

Regarding claim 11, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence further comprising a second rail (shown in figure 3) consisting of at least two metal wires ensheathed in a plastic web, with ends of the first (11) and second (12) rails being in abutting relationship to each other (see figure 3).

Regarding claim 12, Safe-Fence in view of Brattstrom and Robbins Jr. results in a fence wherein the first slot (8) and the second slot (9) are adapted to receive the abutting end of the first rail (11) and the second slot (9) and the third slot (10) are adapted to receive the abutting end of the second rail (12).

Response to Arguments

Applicant's arguments filed 4/16/2007 have been fully considered but they are not persuasive.

Regarding applicant's inquiry as to the advisory action mailed 12/13/2006 (in response to the after final amendment filed 11/16/2006, the amendment was not entered because claims 2-7 and 9-12 were not previously dependent on claim 8, such

that the amended claim 1 presented combinations of claims which had not been considered.

In response to applicant's argument that Johnson '878 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Safe-Fence discloses a buckle and strap arrangement that happens to be used for fencing. Straps and buckles utilized to secure contents within a box, while not in applicant's field of endeavor, act as a constraint maintaining the boundary of the box, the strap would normally be subjected to forces from shifting contents within the box that would stress the strap from the interior of the box and its constraining function on the shape of the box and as such is analogous to a strap acting as a boundary of a space, a fence. Further, it is this constraining function of the packaging strap that relates it to the function of the constraining fence strap so that the device of Johnson is reasonably pertinent to the problems of a constraining fence strap. In looking at the Safe-Fence prior art, in which the strap and buckle arrangement is novel, it is the opinion of the office that it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to seek out alternate forms of both strap and buckle.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that Safe-Fence in view of Johnson '878 fails to disclose or result in a rail which is rigid yet manually deformable in the absence of any assembly thereof with the fencing system. This is not persuasive, because applicant bears the burden to prove the assertion that the material disclosed by Safe-Fence as railing can not meet the claimed limitations but has not done so. In this case the Safe-Fence railing is a commercially available product which can easily be procured by applicant and examined to determine the veracity of applicant's assertions. As it stands, the railing disclosed by Safe-Fence meets all of applicant's claimed limitations, including the as yet non-claimed "when a section of it is placed on an edge of a tabletop, it is self-supporting" (paragraph 19 of applicant's specification). However, it is clear that any novelty of applicant's invention is not related to the properties of the railing, as even applicant has stated "Composite metal and plastic fencing is well-known in the art" (paragraph 12 of applicant's specification) and "It is to be understood that any other type of rail fencing exhibiting stiffness and deformity qualities inherent in composite metal and plastic web fencing may also be utilized" (paragraph 19 of applicant's specification). In an effort to remove the rail construction as an issue, the rejection has been changed to include the teachings of Robbins Jr. and applicant's admitted prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nye (US 3,552,613) is cited for pertaining to the art of strap barriers, Bedford (US 2,582,579) and Bakker et al. (US 4,171,555) are cited for being pertinent to the art of strap buckles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJM

DJM
6/11/2007

Daniel P Stodola

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600


SAFE-FENCE Hardware
Tensioners
AFFORDABLE
ATTRACTIVE
EFFECTIVE
SAFE
HOME
SAFE-FENCE POLYTAPE
SAFE-FENCE HARDWARE
Safe-Tee-Sleeves
Tensioners
Insulators
Connectors
Ground Rod Kit
Miscellaneous
HORSE POWER FENCE CHARGERS
INSTALLATION DIRECTIONS
ELECTRIC FENCE THEORY
ABOUT J.L. WILLIAMS CO.
SAFE-FENCE Tensioners are the cornerstone of the SAFE-FENCE Hardware System. Of solid stainless steel construction, SAFE-FENCE Tensioners hold your fence firmly, yet in instances of violent impact they are designed to protect your horse.
R-40 End Tensioner
Begin and end each strand with a R-40 at gate posts or buildings. Holds webbing tight and allows easy retightening.
R-50 Corner Tensioner
Use the R-50 at all corners or any up and down hill direction change greater than 10 degrees. Also used at tape gates.
R-55 Tee Tensioner
The R-55 has three tensioners. Use for cross fence junctions.
R-24 Splicer
A stainless steel spring buckle similar to the tensioner. Used to join rolls of webbing or repair torn webbing in minutes.
FREE INFORMATION
Send us your name and address (or call toll free 1-800-843-3702) for FREE product samples and information, a Fence Planning Guide and the SAFE-FENCE System Reference Manual.
FREE COST ANALYSIS
Send us (or call with) a detailed description of your fence needs. Our experienced sales staff will provide a cost estimate at no obligation or up-front expense. Discover the affordability of SAFE-FENCE!
Installation directions and tips for SAFE-FENCE Tensioners.
7
5
Electric Fence Questions? E-mail the SAFE-FENCE Hotline!
J.L. Williams Company . PO Box 209 . Meridian, ID 83680
1-800-843-3702
Copyright© 2000 J.L. Williams Company
Web Site by:
HeartBar Graphics

Figure 1

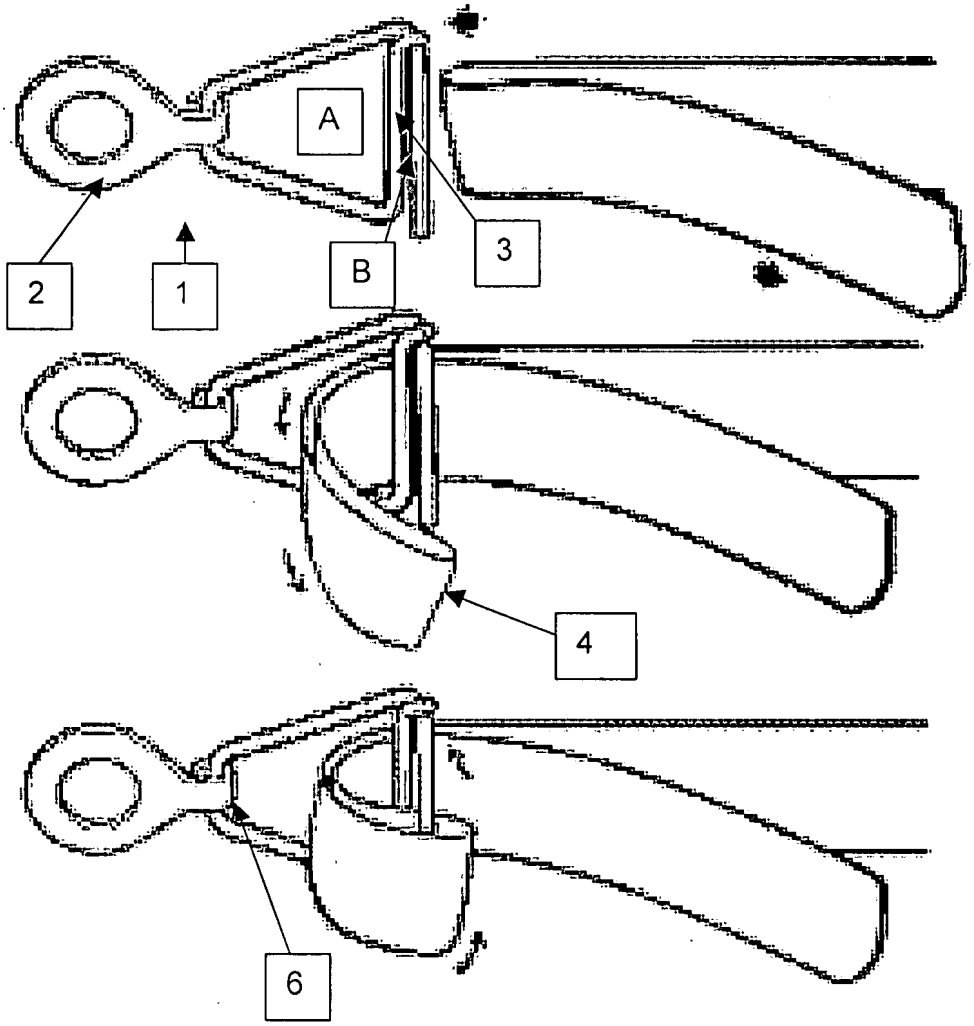

Figure 2

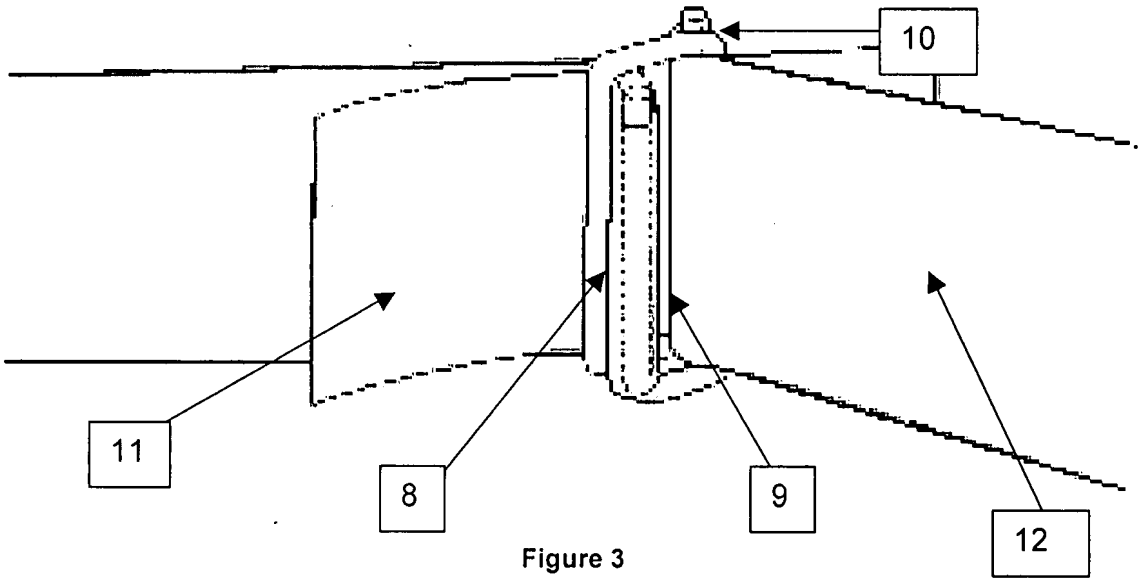

Figure 3